

**IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC**

**VS.**

**NIGEL MARIA**

Criminal Side No. 51 of 2005

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Mr. Chinnasamy for the Republic

Mr. Renaud for the Accused

**RULING**

**Gaswaga, J**

[1] This is a ruling on a submission of ‘no case to answer’ where the accused is charged with a total of thirty (30) different counts all alleged to have been committed between 2003 and 2004 when the accused was still an employee of the Nouvobanq in Victoria. All the thirty separate offences emanated from three broad categories of offences namely (a) Forgery (b) Uttering a false document and, (c) Stealing by servant.

[2] First of all section 183 of the Criminal Procedure Code, Cap 54 mandates a court at the close of the prosecution case to stop and dismiss the case and acquit the accused if it is of the view that no sufficient evidence has been adduced to require the accused to make a defence otherwise he would then be put on his defence. The law on this subject has been settled in our

jurisdiction.

[3] In the case of **Steven 1979 SLR No. 9** the following finding was made;

“The submission of no case to answer may properly be upheld –

(a) *Where there has been no evidence to prove an essential element of the offence charged*

*or;*

*Where the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal would safely convict on it.”*

(b)

[4]“*The proper basis to decide whether there is a case to answer is not whether the trial court does not think that in presence of the evidence adduced any court would convict the accused, but whether the evidence was such that a reasonable tribunal might convict. **[R vs. Olsen 1973 No. 5]**”*

[5] In the case at hand four witnesses were called. Belinda Moncherry (PW1) and Chantal Velma (PW2), both employed as cashiers during the time the accused served the bank in the capacity of customer service agent outlined the procedures followed by customers when withdrawing money. After the two identifying the withdrawal slips PE1 and PE2, Mrs. Lynn Rangasamy (PW3), the acting Manager of Nouvobanq confirmed that they belonged to the bank. Ferdnand Auguste Larue (PW4) also examined the withdrawal slips and stated that the names thereon were correct while the signature was not although it resembled his true signature. In a nut shell, such is the evidence that there is

on the record for the prosecution case.

[6] Now, can this evidence sustain the charges proffered? Can this evidence prove each and every ingredient in all the thirty counts. It will be emphasized that in a charge sheet where several counts exist each single count must be proved on its own to the required standard failing which the affected count will be discontinued and the accused acquitted thereof. I find it imperative however to reproduce only count 1 of the charge sheet since all the counts seem to have been drafted almost in a similar way:

“Count I

***Statement of offence***

*Forgery contrary to Section 331 of the Penal Code read with Section 333 of the said Code and punishable under Section 336 of the said Code.*

***Particulars of offence***

*Nigel Maria on the 12<sup>th</sup> of December 2003 at Nouvobanq, Victoria, Mahe, with intent to defraud forged a signature on a bank withdrawal slip purporting to be the signature of **Ogilvy Tirant**.”*

[7] As can be seen, the accused is alleged to have forged a signature on a bank withdrawal slip purporting to be the signature of one Ogilvy Tirant who is unknown to these proceedings. All the withdrawal slips presented and therefore relied on in this case are in the names of Ogilvy Tirant who was not called as a witness. Instead, Ferdinand Larue was summoned to give evidence which is totally irrelevant to this trial yet given the nature of offences at hand they substantially base on documentary evidence to wit ‘bank withdrawal

slips’.

[8] In short, bearing in mind the charges, the prosecution has not adduced even the slightest evidence to prove a single ingredient of the offences or incriminate the accused. The court wonders why he was actually arraigned.

[9] Armed with this evidence, the prosecution had invited me to put the accused on his defence under section 184 of the Criminal Procedure Code, Cap 54. With due respect to the learned counsel, and I hope I will be acquitted of discourtesy, I decline the invitation for reasons already cited. Instead, having passed the above test in the **Steven case** (supra), the submission of no case to answer shall be upheld. All the thirty (30) counts in the charge sheet are hereby dismissed pursuant to section 183 (supra) and the accused acquitted accordingly.

[10] Before taking leave of this matter I shall seize the opportunity to impress upon the Bar that in a criminal trial, whenever counsel stands up to address the court, whether to lead evidence or cross-examine witnesses, he should never lose sight of the contents of the charge sheet (indictment) – for it acts as the guiding beacons of the entire case, from beginning to end. Special attention should even be paid to the smallest detail of each count in the charge sheet as counsel executes his duties especially the task of deciding on which evidence to lead before the court in a bid to prove a particular offence (count).

**D. GASWAGA**

**JUDGE**

Dated this 28<sup>th</sup> day of May, 2010.